

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

NOV 25 2008

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2008-0241-PR
)	DEPARTMENT B
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
JUNIES A. JENKINS,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-19898

Honorable Charles V. Harrington, Judge

REVIEW GRANTED; RELIEF DENIED

Junies A. Jenkins

Florence
In Propria Persona

E C K E R S T R O M, Presiding Judge.

¶1 After a jury trial in 1987, petitioner Junies Jenkins was convicted of child molestation and attempted child molestation and sentenced to mitigated, consecutive prison terms totaling twenty-eight years. This court affirmed his convictions and sentences on appeal. *State v. Jenkins*, No. 2 CA-CR 87-0605 (memorandum decision filed Nov. 10, 1988). Jenkins has subsequently filed in the trial court a number of post-conviction

petitions pursuant to Rule 32, Ariz. R. Crim. P., and has unsuccessfully sought relief in this court on three occasions. *State v. Jenkins*, No. 2 CA-CR 2007-0008-PR (memorandum decision filed May 31, 2007); *State v. Jenkins*, No. 2 CA-CR 95-0044-PR (order of dismissal filed Feb. 2, 1995); *State v. Jenkins*, No. 2 CA-CR 91-0733-PR (order of dismissal filed Nov. 20, 1991).

¶2 In 2008, Jenkins filed another petition for post-conviction relief, which the trial court summarily dismissed. As we understand that petition, Jenkins alleged he was eligible for relief because, during his prosecution: (1) the state introduced a coerced confession; (2) the state introduced a statement obtained in violation of his right to counsel; (3) he received ineffective assistance of counsel; (4) the trial court erroneously precluded potential “evidence of his medical abnormality”; (5) the state used perjured testimony; (6) his rights under the Double Jeopardy Clause were violated; (7) the state abridged certain newly recognized rights with retroactive application; and (8) the trial court failed to advise him at sentencing of his right to a new trial pursuant to Rule 24, Ariz. R. Crim. P. He also maintains that certain newly discovered evidence would require the court to vacate his conviction or sentence. In this petition for review, Jenkins challenges the trial court’s summary dismissal of this petition for post-conviction relief.¹ We will not disturb the trial court’s denial of post-conviction relief absent an abuse of discretion. *State v. Schrock*, 149 Ariz. 433, 441, 719 P.2d 1049, 1057 (1986).

¹We do not address any claims Jenkins raises for the first time in his petition for review. See Ariz. R. Crim. P. 32.9(c)(1)(ii) (review limited to “issues . . . decided by the trial court”); *State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980).

¶3 “In Arizona, the appeal is the post-conviction proceeding of primary importance.” *State v. Carriger*, 143 Ariz. 142, 145, 692 P.2d 991, 994 (1984). Jenkins has had his appeal, along with numerous applications for post-conviction relief pursuant to Rule 32. “It is the petitioner’s burden to assert grounds that bring him within the provisions of [Rule 32] . . . ,” and he “must strictly comply with Rule 32 or be denied relief.” *Id.* at 146, 692 P.2d at 995. Jenkins has failed to sustain his burden because all of the claims he raises are either precluded under Rule 32.2 or, if excepted from preclusion under Rule 32.2, are not colorable.

¶4 The first five claims for relief Jenkins raised below and reiterates on review are precluded because Jenkins could have raised them on appeal or in prior post-conviction proceedings. *See* Ariz. R. Crim. P. 32.2(a). Jenkins’s claim that the court failed to advise him of his right to a new trial is similarly precluded under Rule 32.2(a)(1). Additionally, his double jeopardy claim and his claim of an unspecified retroactive change in the law are precluded because Jenkins has not explained why he failed to raise them previously. Moreover, the claims are stated in a conclusory fashion, and Jenkins provided no explanation or legal support for these arguments in his petition below. *See* Ariz. R. Crim. P. 32.2(b) (claim based on Rule 32.1(d), (e), (f), (g), or (h) not subject to preclusion if defendant provides meritorious reasons substantiating the claim and excusing failure to raise it previously).

¶5 As to his claim of newly discovered evidence, Jenkins suggests that documents he received with this court’s most recent memorandum decision, as well as “dates, case

numbers, and comments by the Chief Justice” in the decision itself, excused his earlier failure to comply with the requirements of Rule 32. He also contends that events following his conviction shed light on an ongoing conspiracy involving his trial counsel, state prosecutors, prison officials, and the courts. He maintains those parties have conspired to falsely convict him, harass him, deny him due process, continue his incarceration, and deny him his inheritance. However, as the trial court correctly concluded, these putative facts do not constitute newly discovered material evidence that would entitle Jenkins to post-conviction relief. *See* Ariz. R. Crim. P. 32.1(e) (authorizing claim for relief based on facts that “probably would have changed the verdict” that were undiscovered, despite reasonable diligence, until after conviction); *see also State v. Bilke*, 162 Ariz. 51, 52, 781 P.2d 28, 29 (1989) (newly discovered evidence “must appear on its face to have existed at the time of trial”).

¶6 The trial court did not abuse its discretion in summarily dismissing Jenkins’s petition for post-conviction relief. *See State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). Accordingly, although we grant review, we deny relief.

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

GARYE L. VÁSQUEZ, Judge

JOSEPH W. HOWARD, Judge